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SELDEN AND OTHERS V. CAMP AND OTHERS.—Decided at Richmond, January 20, 1898.—*Harrison, J.* Absent, *Cardwell, J.*:

1. **CONTRACTS TO PAY MONEY**—*Time not of essence of contract—Relief—Lease—Right of renewal—Conditions precedent.* Mere default in the payment of money at a stipulated time generally admits of compensation, and hence the time of payment is rarely of the essence of the contract, and when time is not of the essence of the contract, and compensation can be made, courts of equity can grant relief even against the failure to perform punctually conditions precedent. But such relief will not be granted at the instance of a party who has been guilty of gross negligence. In the case of a lease for ninety-nine years, renewable for ever, upon payment of an annual ground rent on a given day each year, and taxes, and on the payment of one year's rent extraordinary and the costs of preparing contract at the end of the first period, with right of the landlord to re-enter at any time during term for default in payment of rent for six months, and hold the premises until the rent and taxes are paid, the mere failure at the end of the first period to pay the one year's rent extraordinary and costs, through ignorance of the fact that the term had expired, and, under the circumstances of this case, does not entitle the landlord to re-enter and take possession of the premises, and a court of equity will compel the lessors to perform their covenant to renew.

CHESAPEAKE & OHIO RAILWAY CO. V. CHAMBERS.—Decided at Richmond, January 20, 1898.—*Keith, P.* Absent, *Riely* and *Cardwell, JJ.*:

1. **CONDEMNATION FOR DAM AND GUARD-BANK**—*Failure to repair—Resulting damages.* Although damages may have been regularly assessed and paid for land condemned for a dam, abutment, and guard-bank, and for the increased liability to overflow the residue of the land of the plaintiff, the defendant is still liable for any injury resulting to the plaintiff by reason of defendant's failure to keep the guard-bank in a reasonably safe and good condition.

2. **FAILURE TO REPAIR GUARD-BANK**—*Resulting damages—Measure of.* In an action to recover damages for an injury inflicted on the plaintiff by reason of the negligent failure of the defendant to keep in order a guard-bank by reason whereof plaintiff's land was flooded, plaintiff can only recover for the injury suffered in respect to the land after the date of his purchase thereof, and before the institution of the suit.

NEW YORK LIFE INS. CO. V. TALIAFERRO.—Decided at Richmond, January 20, 1898.—*Buchanan, J.* Absent, *Cardwell, J.*:

1. **EVIDENCE**—*Objections to—Introducing the same evidence.* If a party objects to the introduction of evidence which is admitted, and afterwards introduces the same evidence himself, it is no ground for reversing the judgment, although the evidence objected to was incompetent.

2. **INSTRUCTIONS BASED ON ONLY PART OF THE EVIDENCE.** It is not error to refuse an instruction based upon only a part of the evidence which tends to prove the fact at issue, and omits altogether other evidence tending to prove the same fact.